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BEFORE THE ARIZONA CORPORATION

**COMMISSIONERS**

TOM FORESE – Chairman  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

Arizona Corporation Commission

**DOCKETED**

**AUG 20 2018**

**DOCKETED**

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AZ CORP COMMISSION  
DOCKET CONTROL

2018 AUG 20 A 11: 55

IN THE MATTER OF THE COMMISSION'S  
INVESTIGATION OF THE BILLING AND  
WATER QUALITY ISSUES OF JOHNSON  
UTILITIES, LLC

DOCKET NO. WS-02987A-18-0050

**MOTION FOR CONTEMPT FINDING**

The Utilities Division (“Staff”) of the Arizona Corporation Commission (“Commission”) hereby moves the Administrative Law Judge (“ALJ”) for an order finding Johnson Utilities, L.L.C. (“Johnson” or the “Company”), and/or any individuals responsible for the Company’s decision-making, in contempt for refusing to supply all necessary documents, records or other information requested by the Interim Manager, EPCOR Water Arizona Inc. (“EPCOR” or the “Interim Manager”), as required by Decision No. 76785. The individual officers, agents, or employees of the Company who are responsible for the Company’s non-compliance have moreover committed a class 1 misdemeanor. A.R.S. § 40-426. Staff recommends monetary penalties be assigned pursuant to A.R.S. § 40-424 in the maximum amount permitted by law, \$5,000, against the Company and against the individuals responsible for the Company’s non-compliance in their personal capacity. This motion is supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Under the Ordering Paragraph of Decision No. 76785, Johnson was ordered to “cooperate fully with the Interim Manager and [to] supply all necessary documents, records, and other information requested by the Interim Manager, whether the documents, records, and other information are in the possession of Johnson Utilities, L.L.C. personnel or the possession of Hunt Mgt., L.L.C., Ultra Management, L.L.C., or another related entity.” [Order, p. 307]

1 The Order further provides that “the Interim Manager shall have full authority to conduct the  
2 business and affairs of Johnson Utilities, L.L.C in all respects, except as authority is expressly  
3 reserved as a right of ownership under Arizona law.” [Id.]

4 Notably, nothing in Decision No. 76785 hinges Johnson’s cooperation with Staff’s selection  
5 of an IM upon a fully executed agreement between Staff and the IM, or the review, input, or approval  
6 of such an agreement by Johnson.

7 Johnson violated Decision No. 76785 by refusing to respond to the Interim Manager’s  
8 multiple requests for access to Johnson’s financial information, records, and accounts. Such access is  
9 fully contemplated by the plain terms of Decision No. 76785. Indeed, such access is vital to the  
10 Interim Manager’s ability to assess and address Johnson’s infrastructure needs – needs which require  
11 immediate attention and intervention, as Johnson continues to remain non-compliant with ADEQ,  
12 despite its insistence that current management was improving operations issues at the company  
13 during the evidentiary hearing in this proceeding.<sup>1</sup>

14 There is no excuse for Johnson’s failure to comply with the Interim Manager’s request and its  
15 violation of this Court’s Order. Of utmost importance, the public health and safety are endangered by  
16 Johnson’s ongoing failure to meet quality standards and regulatory requirements. The Commission  
17 therefore requests the Court find Johnson, and any involved individuals, in contempt of Decision No.  
18 76785 and in violation of A.R.S. § 40-426.

## 19 II. FACTUAL AND PROCEDURAL BACKGROUND

20 On July 24, 2018, the Commission issued the Decision, authorizing the appointment of an  
21 interim manager for Johnson. Based on representations made by Johnson that they intended to resist  
22 the appointment, the Commission filed a Complaint and Application for a Temporary Restraining  
23 Order in Pinal County Superior Court, also on July 24. The Pinal County Superior Court entered the  
24  
25

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26 <sup>1</sup> Jake Kincaid, *Johnson Utilities violations sent to attorney general*, SAN TAN VALLEY SENTINEL  
27 (Aug. 10, 2018), [https://www.pinalcentral.com/san\\_tan\\_valley\\_sentinel/local\\_news/johnson-utilities-violations-sent-to-attorney-general/article\\_e8230c50-4097-5e62-bb9c-089e0f297a79.html](https://www.pinalcentral.com/san_tan_valley_sentinel/local_news/johnson-utilities-violations-sent-to-attorney-general/article_e8230c50-4097-5e62-bb9c-089e0f297a79.html) (last  
28 accessed August 19, 2018).

1 TRO on July 25, ordering Johnson to comply with Decision No. 76785 under reasons provided by the  
2 Commission and pursuant to A.R.S. § 40-422.

3 Meanwhile, on July 26, 2018, the Commission instructed its Staff to proceed with the  
4 appointment of EPCOR as Interim Manager.

5 EPCOR and Staff entered into a contractual agreement for EPCOR to begin an assessment of  
6 Johnson's physical infrastructure, attached hereto as Exhibit "1." EPCOR and Staff subsequently  
7 entered into an Agreement for Interim Management Services (the "IM Agreement"), attached hereto  
8 as Exhibit "2." Both agreements were made and entered into pursuant to and in furtherance of  
9 Decision No. 76785.

10 The IM Agreement contains a "scope of engagement" section, found at Section 1.1 of the  
11 Agreement, as well as several conditions precedent, found at Sections 1.2-1.2.4 of the Agreement.  
12 Section 1.1. of the Agreement provides that the Agreement "will be immediately null and void, or not  
13 become effective, if Johnson fails, to the satisfaction of EPCOR, to affirm at the August 14, 2018  
14 Open Meeting that it will comply with any and all conditions set forth in Section 1.2.1. through  
15 Section 1.2.3. and makes clear progress to transfer access to regulated revenue bank accounts on  
16 August 14, 2018." [Ex. 2, § 1.1]

17 At the August 14, 2018 Open Meeting, Johnson failed to affirm that it would comply with  
18 EPCOR's request, as Interim Manager, for access to Johnson's regulated bank accounts. At the  
19 meeting, EPCOR provided Johnson with a form acknowledgement and agreement to cooperate with  
20 EPCOR in the performance of its Interim Manager Duties, attached hereto as Exhibit "3." EPCOR  
21 gave Johnson a deadline to sign the acknowledgement and agreement of 4:00 p.m. on August 14,  
22 2018.

23 Johnson did not return the signed acknowledgement and agreement by 4:00 p.m. on August  
24 14, 2018.

25 Johnson's refusal to affirm its intent to cooperate with EPCOR at the August 14, 2018 Open  
26 Meeting, and its failure to return the signed acknowledgement and agreement by 4:00 p.m. on August  
27 14, 2018, had the effect of preventing the formal agreement between Staff and EPCOR from going  
28 into effect, per Section 1.1 of the Agreement.

1 Johnson's actions are a violation of Decision No. 76785, which instructed Johnson to  
2 cooperate with Staff's selection of an IM, regardless of the identity of the IM, and regardless of the  
3 existence of a formal Interim Management Services Agreement to be executed at a future date  
4 between Staff and the IM, the terms of which were never negotiable by Johnson.<sup>2</sup>

### 5 III. ARGUMENT

#### 6 a. The Court Should Find Johnson in Contempt of Decision No. 76785.

7 Ariz. Rev. Stat. § 40-424 provides as follows:

8 A. If any corporation or person fails to observe or comply with any order, rule, or  
9 requirement of the commission or any commissioner, the corporation or person shall  
10 be in contempt of the commission and shall, after notice and hearing before the  
11 commission, be fined by the commission in an amount not less than one hundred nor  
12 more than five thousand dollars, which shall be recovered as penalties.

13 B. The remedy prescribed by this article shall be cumulative

14 Ariz. Rev. Stat. Ann. § 40-424. *See also* A.R.S. § 12-864 (refusal to comply with an order of  
15 the court constitutes civil contempt.).

16 The contempt in this case is Johnson violating the terms of Decision No. 76785, which  
17 requires Johnson to cooperate fully with the Interim Manager and supply all necessary documents,  
18 records and other information requested by the IM; and that the IM shall have full authority to  
19 conduct the business and affairs of Johnson in all respects, except as authority is expressly reserved  
20 as a right of ownership under Arizona law.

21 Access to Johnson's bank accounts is plainly contemplated within the Decision's ordering  
22 paragraph that Johnson cooperate with all requests for information and allow the IM to conduct the  
23 business and affairs of Johnson. The IM has been appointed to replace current management, not  
24 assume a side-by-side role with current management and receive access and information at current  
25 management's discretion.

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26  
27 <sup>2</sup> Johnson is not a signatory to the Interim Management Services Agreement and was not consulted or  
28 otherwise involved in the drafting of the Interim Management Services Agreement. *See* Exh. 2.  
Johnson was not consulted or otherwise involved in Staff's selection of EPCOR as the Interim  
Manager following the Commission's issuance of Decision No. 76785 on July 24, 2018.



1 Johnson has engaged in obstruction of EPCOR's ability to begin servicing Johnson's  
2 customers as the IM, which EPCOR will only undertake with the assurance that Johnson will  
3 cooperate, pursuant to Decision No. 76785. Johnson's refusal to cooperate has resulted in EPCOR's  
4 inability to begin work; however, EPCOR remains Staff's selected IM, and Johnson is required to  
5 cooperate with EPCOR pursuant to Decision No. 76785.

6 To the extent Johnson intends to argue that Johnson can prevent the IM Agreement from  
7 going into effect by refusing to cooperate, and then point to its own prevention of the contract from  
8 taking effect as the reason it doesn't have to cooperate, the Court should dismiss this circular  
9 argument as further evidence of current management's disrespect and disregard of this Commission  
10 as its regulator.

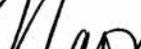
11 **b. The Individuals Responsible for Johnson's Non-Compliance Have Violated**  
12 **A.R.S. § 40-426.**

13 Johnson is a legal entity and can only act through its managers and officers. As such, there is  
14 likely some individual person(s) who authorized the Company's decision to violate the Commission's  
15 orders. Such action is a violation of A.R.S. § 40-426, which provides that officers, agents and  
16 employees of public service corporations who violate Commission orders are guilty of a class 1  
17 misdemeanor. The individuals responsible for Johnson's actions should be identified in the course of  
18 the evidentiary hearing, and a legal conclusion entered that finds them in violation of A.R.S. § 40-  
19 426.

**c. The Court Should Assign Monetary Penalties Pursuant to A.R.S. § 40-424.**

Because Johnson's conduct is ongoing, and because such conduct puts the public health and safety at issue, the Commission requests that this Court assign a monetary penalty of \$5,000 against Johnson for violation of Decision No. 76785. Staff further requests that the individuals responsible for Johnson's non-compliance, after being identified through the hearing, likewise be fined personally in an amount of no less than \$5,000 per violation.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of August, 2018.

  
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## **CERTIFICATE OF SERVICE**

On this 20th day of August, 2018, the foregoing document was filed with Docket Control as an Utilities Division Motion - Miscellaneous, and copies of the foregoing were mailed on behalf of the Utilities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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# **EXHIBIT 1**



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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TOM FORESE – Chairman  
BOB BURNS  
ANDY TOBIN  
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JUSTIN OLSON

IN THE MATTER OF THE COMMISSION'S  
INVESTIGATION OF THE BILLING AND  
WATER QUALITY ISSUES OF JOHNSON  
UTILITIES, LLC.

DOCKET NO. WS-02987A-18-0050

**STAFF'S NOTICE OF FILING  
CONSULTING AGREEMENT**

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") through this notice file an executed copy of the Consulting Agreement entered between EPCOR Water Arizona ("EPCOR") and Staff. In Decision No. 76785, the Commission ordered Staff to immediately commence efforts to obtain an agreement with an Interim Manager who shall assume operation of Johnson Utilities, L.L.C. ("Johnson") as soon as possible on an interim basis. After completing the process of soliciting interest from potential candidates and reviewing their documentation Staff recommended EPCOR Water Arizona to the Commissioners. At the July 26, 2018 Open Meeting, the Commissioners expressed their preference as to which candidate would be the appropriate candidate and directed Staff to proceed as directed in Decision No. 76785. Pursuant to that direction Staff has entered into the attached Consulting Agreement, as a first step, so that EPCOR can commence its evaluation of Johnson's facilities while Staff and EPCOR continue to

Arizona Corporation Commission

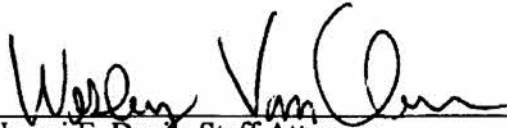
**DOCKETED**

**AUG 01 2018**

DOCKETED BY

1 finalize the details of the Interim Manager Agreement, which will be forthcoming soon. The  
2 Consulting Agreement is attached hereto as Attachment A.

3 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of August 2018.

4  
5   
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8 Robin R. Mitchell, Assistant Director  
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## CERTIFICATE OF SERVICE

On this 1<sup>st</sup> day of August, 2018, the foregoing document was filed with Docket Control as an Utilities Division Notice of Filing - Miscellaneous, and copies of the foregoing were mailed on behalf of the Utilities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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Docket No. WS-02987A-18-0050

# **ATTACHMENT A**



**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (this "Agreement"), dated August 13, 2018 (the "Effective Date"), is by and between the Arizona Corporation Commission, a duly authorized agency of the State of Arizona ("Commission"), and EPCOR Water Arizona Inc., an Arizona public service corporation ("Contractor"), with its principal office at 3255 W Pinnacle Peak Road, Ste. 300, Phoenix, AZ 85027, (623) 445-2427 Martin Stanek, (623) 815-3136 Shawn Bradford

In consideration of the mutual agreements set forth, the parties to this Agreement hereby agree as follows:

1. The Commission agrees to retain Contractor, and the Contractor agrees to serve the Commission, to perform the scope of work outlined in Attachment "A" (the "Scope of Work") upon the terms and conditions set forth in this Agreement.

2. The Commission shall coordinate payment to the Contractor, as fees for professional services, the sum of an amount not to exceed fifty thousand dollars (\$50,000.00) (the "Fee Cap"). The Contractor hereby acknowledges that its total compensation under this Agreement shall not exceed \$50,000.00. If, at any time Contractor determines that \$50,000 will be inadequate to fund Contractor's performance of all of the Scope of Work, Contractor will promptly notify the Director of the Utilities Division of the Commission and, in the absence of other arrangements between the parties, will cease work when the aggregate cost of its services under this Agreement are equal to the Fee Cap. Contractor personnel shall maintain time records of their performance under this Agreement and those services will be billed to the Commission at the fully loaded salary or hourly rate paid to such personnel by Contractor. Any travel expenses, which are incurred, require prior approval and will be paid as follows (with receipts): (1) Coach Airfare (any upgrades must be documented and recorded in monthly statements and all costs associated with any upgrade remain the responsibility of Contractor). (2) Lodging, mileage and food rates will be paid as outlined in attachment "E" (with receipts). (3) Rental car, if necessary, will be reimbursed at the mid-size class or smaller and fuel will be reimbursed (with receipts) only from local stations. No fuel surcharges or refueling from the rental car company will be reimbursed. (5) Commission shall pay only all costs associated with direct communication and shipping between Contractor and the Commission. Contractor shall pay all costs associated with interpersonal communications such as phone calls, mail, and/or shipping between one Contractor office and another. The compensation provided for under this Agreement is determined to be fair and reasonable.

3. During the period of Contractor's retainer under this Agreement, Contractor shall serve the Commission and, subject to the Fee Cap, shall perform any and all services as required to complete the work tasks outlined in Attachment "A" to this contract, , "In the matter of the Commission's Investigation of the Billing and Water Quality Issues of Johnson Utilities, LLC, Docket Nos. WS-02987A-18-0050". Contractor agrees to commence work as soon as possible upon execution of this Agreement. Contractor acknowledges that, unless it provides written notice to the contrary to the Director of the Utilities Division, it shall abide by any written directions received from the Director of the Utilities Division or his designee regarding the performance of the Scope of Work, provided, however, that no such written directions shall supersede or modify the terms of this Agreement. If Contractor in good faith believes it is unable or unwilling to comply with any such written direction from the Director of the Utilities Division, it shall promptly provide written notice to that effect to the Director of the Utilities Division and shall be excused from abiding by such written direction unless the parties mutually agree otherwise. Contractor agrees that Contractor shall not seek reimbursement for any fees or expenses incurred in connection with the provision of services under this Agreement to the extent those services or expenses are performed after its receipt of written direction from the Director of the Utilities Division and are in conflict with that written direction or to the extent such fees or expenses, when added to prior fees and expenses submitted to the Commission under this Agreement, are in excess of the Fee Cap.

4. Contractor is retained by the Commission only for purposes and to the extent as set forth in this Agreement, and its relation to the Commission shall, during the period of its retainer and provision of services under this Agreement, be that of an independent contractor. Contractor shall be free to dispose of such portion of its entire energy and skill as it is not obligated to devote under this Agreement to the Commission in such a manner as it sees fit, and to such persons, firms or corporations as it deems advisable so long as no conflict of interest exists. Contractor shall not be considered under the provisions of this Agreement, or otherwise, as having employee status with the Commission. This Agreement does not create any principal-agent relationship between the parties, and neither party shall have any right or authority to bind the other.

UTILITIES CONTRACT NO. 361

5. The term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with the terms of this Agreement, shall automatically expire at the close of business on December 31, 2018 (the "Expiration Date").

6. Contractor shall submit to the Commission monthly, detailed statements of services rendered. Contractor shall submit, with each monthly billing, records of time expended, services performed and expenses incurred in relation to this Agreement in sufficient detail so as to justify claims for payment. Each monthly billing shall be submitted by the 15<sup>th</sup> of the month following the month when services were rendered. All Contractor invoices will be due and payable within 30 days after receipt by the Commission.

7. This Agreement may be terminated at any time prior to the Expiration Date by either party for any reason whatsoever upon giving ten (10) days' prior written notice to the other party.

8. Equal Opportunity Clause: During the performance of this contract, Contractor agrees that it and each of its subcontractors under this Agreement shall be in full compliance with all requirements and policies established by Title VII of the Civil Rights Act of 1964, as amended. In accordance with those provisions, neither Contractor nor any of its subcontractors may discriminate against any employee or applicant for employment due to race, color, religion, sex, national origin, or age and each of them shall treat all applicants and employees fairly and without regard to any physical or mental handicap (disability) they may have which is unrelated to job qualifications or the fact that they are veterans of the Vietnam Era.

9. The Contractor and each of its subcontractors under this Agreement shall comply with the Americans With Disabilities Act of 1990 (Public Law 103-336) and the Arizona Disability Act of 1992 (A.R.S. 41-1492 et. seq.).

10. In accordance with A.R.S. § 41-4401, the Contractor warrants that it and each of its subcontractors under this Agreement shall be in compliance with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214(A) related to the immigration status of their respective employees. These warranties shall remain in effect through the term of this Agreement. A breach of these warranties shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of the Agreement. Contractor shall obtain statements from each of its subcontractors under this Agreement certifying compliance and shall furnish the statements to the Commission upon request. Contractor and its subcontractors under this Agreement shall verify the employment eligibility of employees hired after December 31, 2007 through the E-Verify Program operated by the Department of Homeland Security. Contractor and each of its subcontractors under this Agreement shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work under this Agreement.

11. This Agreement comprises the entire agreement between the Commission and Contractor regarding its subject matter and expressly supersedes all prior agreements and understandings, both written and oral, between the parties with respect to that subject matter.

12. This Agreement and the Contractor engagement it represents is awarded pursuant to the provisions of A.R.S. Section 41-2501M. The compensation provided under this contract is determined to be fair and reasonable.

13. This Agreement incorporates the following as if each were fully set forth in this Agreement:

- (A) The Scope of Work, attached as Attachment "A"
- (B) The "Uniform Terms and Conditions", attached as Attachment "B"
- (C) The "Special Terms and Conditions", attached as Attachment "C".
- (D) The "Independent Contractor Agreement", attached as Attachment "D".
- (E) State of Arizona Lodging and Meal Rates, attached as Attachment "E".
- (F) Certificate of Insurance with appropriate limits as outlined in Attachment "F".

14. The parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this Agreement where the sole relief sought is monetary damages of \$5,000 or less, exclusive of interest and costs.

15. This Agreement shall not confer any rights or remedies upon any third party, all such rights and remedies arising from or out of this Agreement being exclusively for the parties and their respective successors and permitted assigns.

UTILITIES CONTRACT NO. 361

16. This Agreement shall be binding upon and inure to the benefit of the Commission and Contractor and their respective successors and permitted assigns. Neither party to this Agreement may assign either this Agreement or any of its rights, interests or obligations under this Agreement without the prior written approval of the other party.

17. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement, including any amendments, to the extent signed and delivered by means of a facsimile machine or by email in portable document format (pdf), shall be treated in all manner and respects as an original of this Agreement or such amendment and shall be considered to have the same binding legal effects as if it were the original signed version delivered in person.

18. This Agreement may not be amended except pursuant to a written agreement executed by the Commission and Contractor.

19. No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of that right, power or privilege, nor will any single or partial exercise of any right, power or privilege preclude any further exercise of that or any other right, power or privilege under this Agreement.


20. The Director of the Utilities Division and/or his designee is responsible for the Commission's overall management of Contractor's work under this Agreement. The Director shall be responsible for the Commission's overall management of Contractor's work and determining Commission's position with respect to Contractor's final compliance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in Phoenix, Arizona this 1st day of August, 2018.

ARIZONA CORPORATION COMMISSION

EPCOR WATER ARIZONA INC.

  
\_\_\_\_\_  
DIRECTOR  
UTILITIES DIVISION

By:   
Its: VP-Operations  
Date: 8-1-2018

\_\_\_\_\_  
SOC. SEC. NO./EMPLOYER ID NO.

IN WITNESS WHEREOF, I, Matthew J. Neubert, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my signature at the Capitol, in the City of Phoenix, this 1 day of August, 2018.

  
\_\_\_\_\_  
Interim Executive Director

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Legal Counsel

# **ATTACHMENT**

## **“A”**

## **SCOPE OF WORK**

### **EPCOR**

## **IN THE MATTER OF THE COMMISSION'S ASSESSMENT OF WATER AND WASTEWATER UTILITY SYSTEM ISSUES OF JOHNSON UTILITIES, LLC.**

**DOCKET NO. WS-02987A-18-0050**

### **STATEMENT OF WORK**

The Contractor(s) will undertake all tasks required to conduct the assessment and analysis as indicated in the Major Work Elements specified below.

#### **Major Work Elements:**

- 1) Perform a complete engineering review of all wastewater collection system and treatment facilities including associated lift stations and force mains to identify deficiencies and recommend any immediate corrections to be made to ensure that the facilities meet safety standards and are operationally permit compliant.
- 2) Review records of historic Sanitary Sewer Overflows ("SSOs") and prepare a comprehensive plan to mitigate SSOs and other unauthorized discharges.
- 3) Perform a complete engineering review of all water production and treatment facilities, water transmission, and water distribution systems to identify deficiencies and recommend immediate corrections to be made to ensure that adequate supply is available to meet customer demands and emergency flow requirements.
- 4) Review historic water quality sampling records and the current production operating strategy. Prepare a sampling plan to confirm current water quality parameters. Determine what modifications need to be made to the operating strategy to ensure the system operates in compliance with all water quality requirements.
- 5) Prepare prioritized project recommendations including estimated cost and timeline to address safety concerns, compliance requirements, and operational reliability.

### **GENERAL REQUIREMENTS APPLICABLE TO ALL WORK ELEMENTS**

- 1) Coordinate review and draft work scope findings with Internal.
- 2) Attend meetings in person or via teleconference as requested by Staff.
- 3) Prepare a report with review findings.
- 4) If requested, appear at and respond to Commissioners' questions at Open Meetings.



# **ATTACHMENT**

## **“B”**

## UNIFORM TERMS AND CONDITIONS

### Version 9

#### 1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. *"Contractor"* means any person who has a Contract with the State.
- 1.5. *"Days"* means calendar days unless otherwise specified.
- 1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

#### 2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### **3. Contract Administration and Operation**

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract.

The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States.

Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### **4. Costs and Payments**

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
  - 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
  - 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
  - 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
  - 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
  - 4.5.1. Accept a decrease in price offered by the contractor;
  - 4.5.2. Cancel the Contract; or
  - 4.5.3. Cancel the contract and re-solicit the requirements.

#### **5. Contract Changes**

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law.



Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
  - 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
  - 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4. Force Majeure.
  - 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## **7. Warranties**

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this

paragraph are not affected by inspection or testing of or payment for the materials by the State.

- 7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

- 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## **8. State's Contractual Remedies**

- 8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

- 8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

- 8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State

concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## **9. Contract Termination**

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5. Termination for Default.
  - 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
  - 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
  - 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under

this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

- 9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. **Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. **Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15<sup>th</sup> Avenue, Suite 201, Phoenix, Arizona, 85007.

# **ATTACHMENT**

## **“C”**



## **Special Terms & Conditions**

### **Accuracy of Work**

The Contractor shall be responsible for the accuracy of the work and shall promptly make all necessary revisions or corrections resulting from errors and omissions on the part of the Contractor without additional compensation. Acceptance of the work by the State will not relieve the Contractor of the responsibility for subsequent correction of any such errors and the clarification of any ambiguities.

### **Alternate Bid**

If the bidder submits an alternate bid, each alternate will be submitted as a completely separate bid package including all documents, signatures, and requirements of the Invitation for Bid. An alternate will not be included in the primary bid envelope. Each alternate bid will be submitted separately in a sealed envelope with the Invitation for Bid number, the bidder's name and address, and the words 'Alternate Bid' clearly indicated on the envelope.

### **Amendments**

Any change in the contract including the Scope of Work described herein, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of the contractor and the Commerce Procurement Office of the State of Arizona. Any such amendment shall specify an effective date, any increases or decreases in the amount of the contractors' compensation if applicable and entitled as an 'Amendment', and signed by the parties identified in the preceding sentence. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification or supplementation to the contract.

### **Americans With Disabilities Act of 1990**

The Contractor shall comply with the Americans With Disabilities Act of 1990 (Public Law 101-336) and the Arizona Disability Act of 1992 (A.R.S. § 41-1492 et. seq.), which prohibits discrimination on the basis of physical or mental disabilities in delivering contract services or in the employment, or advancement in employment of qualified individuals.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Contract Manager for the solicitation. Request should be made as early as possible to allow time to arrange the accommodation.

### **Appropriation of funds**

Every payment obligation of the Agency under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the Agency at the end of the period for which funds are available. No liability shall accrue to the Agency or the State of Arizona in the event this provision is exercised, and neither the Agency nor the State shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

### **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.



#### Assignment

The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Arizona of all rights, title and interest in and to all causes of action that the contractor may be under the antitrust laws of the United States or the State of Arizona for which causes of action have accrued or will accrue as the result of or in relation to the goods or services purchases or procured by the contractor in the fulfillment of the contract with the State of Arizona.

The contractor represents that it is an independent contractor offering such services to the general public and shall not present himself or his employees as an employee of the State of Arizona. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workmen's compensation, employee insurance, minimum wage requirements, overtime and agree to indemnify, save, and hold the state of Arizona, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

#### Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract. Should Contractor not desire to retain the audit documentation in its entirety for a period of five (5) years from the date of the audit report, they shall be given to the Auditor General for safekeeping.

#### Auditor General Approval

Any contract awarded under this RFP must be approved by the Arizona Auditor General's office prior to utilization by the user agency unless the user agency is authorized under Arizona State Law to contract for its own audit. The user agency shall submit its request for contract approval to the Auditor General through the ASRS. All audits must be approved by the Auditor General prior to acceptance by the user agency.

#### Availability of Funds for the Next Fiscal Year

Funds are not presently available for performance under this contract beyond the current fiscal year. The State's obligation for performance of this contract beyond this fiscal year is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the State for any payment may arise for performance under this contract beyond the current fiscal year until funds are made available for performance of this contract.

#### Bid Evaluation

In accordance with the Arizona Procurement Code § 41-2533, Competitive Sealed Bidding, awards will be made to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the Invitation For Bid.

#### Billing

All billing notices shall include delivery time, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Any contract release order issued by the requesting agency shall refer to the contract number and line item number(s).

#### Billing – Commodities

1. All billing notices or invoices shall be sent to the eligible using agency whose address appears on the contract release order/purchase order as the 'bill to address' and should contain, at a minimum, the following information.

- 1.1. Name and address of the contractor;
- 1.2. Both the contract number and contract release/purchase order number;
- 1.3. The contractor's federal tax identification number;
- 1.4. The contractor's remittance address;
- 1.5. A description of the goods or services provided;
- 1.6. Quantity and delivery/service timeframe;
- 1.7. Itemized (if applicable) and total invoice pricing.

#### Budget

The proposal shall contain the following:

- A budget shall include hours for professional and/or support personnel. Any approved travel shall be at State rates (visit GAO Website at [www.gao.az.gov](http://www.gao.az.gov) for rates), and reimbursable at cost. See Pricing Schedule.

#### Cancellation

The State reserves the right to cancel the whole or any part of the contract due to failure of the Contractor to carry out any term, promise, or condition of the contract. The State will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as in any of the following:

The Contractor provides personnel that do not meet the requirements of the contract.

The Contractor fails to perform adequately the services required in the contract.

The Contractor attempts to impose on the State, personnel, which are of an unacceptable quality.

The Contractor fails to furnish the required product within the time stipulated in the contract.

The Contractor fails to make progress in the performance of the requirements of the contract and/or gives the State a positive indication that the Contractor will not or cannot perform to the requirements of the contract.

If the Contractor does not correct the above problem(s) within ten (10) days after receiving the notice of default, the State may cancel the contract. If the State cancels the contract pursuant to this clause, the State reserves all rights or claims to damage for breach of contract.

#### Cancellation for Conflict of Interest

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

#### Certifications

All key personnel when required shall provide evidence of their certification(s) relevant to the services provided under the contract.

#### Changes (Fixed Price)

The State may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following, 1) description of services to be performed, 2) time of performance, e.g., hours of the day, days of the week, 3) place of performance of the services, 4) drawings, designs or specifications when the supplies to be furnished are to be specially manufactured for the State in accordance with the drawings, designs or specifications, 5) method of shipment or packing of supplies, place of delivery.

The Contractor shall respond to the Change Order with a proposal. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by the Change Order, the Procurement Officer shall make an equitable adjustment in the contract price, the delivery schedule or both and shall modify the contract in writing accordingly.

#### Civil Rights Assurance Statement

The Contractor and Subcontractors are subject to Title VI of the Civil Rights Act of 1964, Section 504 of Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendment of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away from or otherwise denied access to or benefit from any program or activity that is directly associated with a program of the RECIPIENT on the basis of race, color, national origin, age, sex (in educational activities) or disability.

#### Civil Rights Notification

The AGFD prohibits discrimination on the basis of race, color, sex, national origin, age, disability in its programs and activities. If anyone believes they have been discriminated against in any of the AGFD programs or activities, including its employment practices, the individual may file a complaint alleging discrimination directly with the AGFD Deputy Director, 2221 W. Greenway Rd., Phx., AZ 85023, (602) 789-3290, or the U.S. Fish and Wildlife Service, 4040 N. Fairfax Dr., Suite 130, Arlington, VA 22203. If you require this document in an alternative format, please contact the AGFD Deputy Director as listed above or call TTY at 1-800 367-8939.

#### Code of Conduct

The contractor shall avoid any action that might create or result in the appearance of a) inappropriate use or divulging of information gathered or discovered pursuant to the performance of its duties under the contract; b) acted on behalf of the State without appropriate authorization; c) provided favorable or unfavorable treatment to anyone; d) made a decision on behalf of the State that exceeded its authority, could result in impartiality, or have a political consequence for the State; e) misrepresent or otherwise impeded the efficiency, authority, actions, policies, or adversely affect the confidence of the public or integrity of the State; or, f) loss of impartiality when advising the State.

#### COMPLIANCE REQUIREMENTS FOR A.R.S. § 41-4401, GOVERNMENT PROCUREMENT; E-VERIFY REQUIREMENT.

The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program.). A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract. The State Agency retains the legal right to inspect the papers of any employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty

#### Confidential Information

If a person believes that any portion of a proposal, bid, offer, specification, protest or correspondence contains information that should be withheld, then the Procurement Officer shall be so advised in writing (Price is not confidential and will not be withheld). Such material shall be identified as confidential wherever it appears. The State, pursuant to A.R.S. § 41-2533(D) or A.R.S. § 41-2534(D), shall review all requests for confidentiality and provide a written determination. If the confidential request is denied, such information shall be disclosed as public information, unless the person utilizes the 'Protest' provision as noted in § 41-2611 through § 41-2616.

#### Confidentiality (End-users)

Notwithstanding aggregate usage statistics used for reporting purposes, Contractor shall keep confidential all information concerning individual end-users. Contractor shall not, under any conditions, resell, transfer or convey information about end-users to any third party. Contractor shall not retain or reuse information about the end-users in their own operations.

#### Confidentiality of Information

The contractor shall treat all information and in particular, information relating to recipients and providers, which is obtained by it through its performance under the contract, as confidential information to the extent that confidential treatment is provided under State and federal law, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and protection of its rights hereunder.

#### Confidentiality of Records

The contractor shall establish and maintain procedures and controls acceptable to the State for the purpose of assuring that information or data in its possession is not mishandled, misused, released, disclosed, or used in an inappropriate manner by it, its agents, officers, or employees. This includes information contained in its records obtained from the State or others, necessary for contract performance. The contractor shall take all reasonable steps and precautions to safeguard this information and data and shall not divulge the information or data to parties other than those needed for the performance of duties under the contract.

#### Conflict of Interest

No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.

The Contractor covenants that no public or private interest exists and none shall be acquired directly or indirectly which would conflict in any manner with the performance of Contractor's contract.

The State intends to award multiple contracts to achieve a 'pool' of available appraisers based upon the categories outlined in the Scope of Work. As this contract will be used by multiple state agencies, each awarded appraiser is hereby responsible to notify the requesting agency if a conflict of interest exists if awarded a particular project under this resultant contract.

#### Contract

The contract between the State of Arizona and the contractor shall consist of the solicitation as amended, any requests for clarifications and/or best and final offers, the proposal submitted by the contractor, their responses to any requests for clarifications and/or their best and final offer. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the solicitation as amended shall govern. However, the State reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the solicitation as amended or the contractor's proposal. In all other matters not affected by the written clarification, if any, the solicitation shall govern.

#### Contract Additions

Items required for expanding/upgrading the existing system shall be purchased at the prices (equal to or less than) provided in response to this solicitation during the term of the contract and any extensions which may be implemented jointly by the State and the contractor.

#### Contract Assignment

Contractor may not assign, transfer or convey any of its rights or obligations under this Contract without the written permission of the Agency.

#### Contract Defined

The contract between the State of Arizona and the contractor shall consist of (1) the Request for Proposal (RFP) and any amendments thereto, and (2) the proposal submitted by the contractor in response to the RFP. In the event of the conflict in language between the two documents referenced above, the provisions and requirements set forth and/or referenced in the Request for Proposal shall govern. However, the State reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements state in the RFP or the contractor's proposal. In all other matters not affected in written clarification, if any the Request for Proposal shall govern.

The contract shall be construed according to the laws of the State of Arizona. The State of Arizona is not obligated for expenditures under the contract until funds have been encumbered.



The contractor agrees and understands that the State of Arizona's agreement to the contract is predicated, in part and among other considerations, on the utilization of the specific individuals(s) and/or personnel qualifications(s) as identified and/or described in the contractor's proposal. Therefore, the contractor agrees that no substitution of such specified individuals and/or personnel qualifications shall be made without the prior written approval of the State Agency. The contractor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the State Agency's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The State of Arizona agrees that an approval of a substitution will not be unreasonably withheld. The contractor agrees to reveal its staffing levels by function, including resumes, upon request by the State at any time during the contract.

#### Contract Modifications

The State will reserve the right to modify this contract as circumstances may require without penalty to fulfill the needs of the State. The Contractor (s) will be notified prior to any changes in the contract. All contract modifications must be in writing.

#### Contract Renewal

The contract shall not bind nor purport to bind, the State for any contractual commitment in excess of the original contract period. The State shall have the right, at its sole option, to renew the contract for four (4) one-year periods or a portion thereof. If the State exercises such rights, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period with the exception of price. The Contractor shall agree that the prices stated in the original contract shall not be increased in excess of the maximum percentage of increase stated on the Pricing Schedule attached to this document.

#### Contract Term

The term of any resultant contract will commence on the date of award and will continue for one year unless canceled, terminated or extended as otherwise provided herein.

#### Contract Termination

**Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

**Termination for Convenience.** The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

**Termination for Default.** In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to

the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

**Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

**Definition of Key Words Used in the RFP**

- **Shall, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of a proposal as non-responsive.

- **Should:** Indicates something that is recommended but not mandatory. If the offeror fails to provide recommended information, the State may, at its sole option, ask the offeror to provide the information or evaluate the proposal without the information.

- **May:** Indicates something that is not mandatory but permissible.

**Electronic or Information Technology**

Products, services and maintenance shall comply with A.R.S. § 41-3531, which requires conformance with the requirements of Section 508 of the Rehabilitation Act of 1973. Failure to comply shall be considered a breach of the Contract.

**Expenses**

The Agency shall reimburse the Contractor for expenses in connection with the work performed under this Contract, including lodging, transportation costs, meals, copying fees, mailing fees, etc or such expenses are that are not included in the attached price sheet.

**Federal Immigration and Nationality Act**

By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV.

The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

**Federal Immigration and Nationality Act 2**

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

**Independent Contractor**

This contract is for the contractor to provide work under a service agreement with the State and not as an employee or agent of the State. The contractor is solely and exclusively responsible, legally and financially, for wages, per diem, taxes, Social Security payments, health benefits, insurance, bonds, Workmen's Compensation costs, and any other fees or expenses the contractor may be required to pay in his normal course of business.

### Insurance

To view the complete list of indemnification and insurance requirements, please visit the ADOA Risk Management website at

[http://www.azrisk.state.az.us/agency\\_information/insurance/module\\_index.asp](http://www.azrisk.state.az.us/agency_information/insurance/module_index.asp) or contact ADOA Risk Management Division at (602) 542-1445 or (602) 542-5372 for assistance.

## **STANDARD PROFESSIONAL SERVICE CONTRACTS**

### **INDEMNIFICATION CLAUSE:**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

### **INSURANCE REQUIREMENTS:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property arising from, or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

#### **1. Commercial General Liability (CGL) – Occurrence Form**

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$ 2,000,000
- Products – Completed Operations Aggregate \$ 1,000,000
- Personal and Advertising Injury \$ 1,000,000
- Damage to Rented Premises \$ 50,000
- Each Occurrence \$ 1,000,000

- a. The policy shall be endorsed as required by this written agreement, to include *the State of Arizona, and its departments, agencies, boards, commissions, universities officers, officials,*



*agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.*

- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**2. Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

Combined Single Limit (CSL)    \$ 500,000

- a. Policy shall be endorsed, as required by this written agreement, to include *the State of Arizona, and its departments, agencies, boards, commissions, universities officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.*
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**3. Workers' Compensation and Employers' Liability**

- Workers' Compensation Statutory
- Employers' Liability

Each Accident	\$ 1,000,000
Disease – Each Employee	\$ 1,000,000
Disease – Policy Limit	\$ 1,000,000

- a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each contractor or subcontractor exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

**4. Professional Liability (Errors and Omissions Liability)**

Each Claim	\$ 1,000,000
Annual Aggregate	\$ 1,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

- B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, as required by written agreement, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
  2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- C. **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the State of Arizona, within two (2) business days of receipt, notice if a policy is suspended, voided, or cancelled for any reason. Such a notice shall be mailed, emailed, hand delivered or sent by facsimile transmission to **Arizona Corporation Commission, c/o Kim Battista, Administration Division Director, 1400 W. Washington Street, Phoenix, AZ 85007, Fax (602) 542-4111.**
- D. **ACCEPTABILITY OF INSURERS:** Contractors insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) as required by this Contract. An authorized representative of the insurer shall sign the certificates.
- All certificates and endorsements as required by this written agreement, are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- All certificates required by this Contract shall be sent directly to **(Arizona Corporation Commission, c/o Yvonne Watkins, Administrative Services Officer, 1200 W. Washington Street, Phoenix, AZ 85007).** The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**
- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the contractor that its subcontractors have the required coverage.
- G. **APPROVAL AND MODIFICATIONS:** The contracting agency, in consultation with State Risk reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by the administrative action.
- H. **EXCEPTIONS:** In the event the Contractor(s) or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

#### Invoicing

The Contractor will invoice the State for all projects according to the manner assigned for the type of project in this solicitation. All invoices will contain the contract number, contract name, project number, labor hours, labor rate, materials supplied, Contractor's name and address, and the name of the Contractor's representative to contact concerning billing questions.

#### Key Personnel

It is essential that the contractor provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The contractor must assign specific individuals to the key positions. Once assigned to work under the contract, key personnel shall not be removed or replaced without the prior written approval of the issuing agency and a copy to the procurement office of record.

#### Licenses

Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.

#### Multiple Award

The state has a large number and variety of potential using agencies at locations throughout Arizona. In order to assure that any ensuing contracts will allow the state to fulfill current and further requirements, the state reserves the right to award contracts to multiple companies. The actual utilization of any contract will be at the sole discretion of the state. The fact that the state may make multiple awards should be taken into consideration by each potential contractor.

#### Non-Collusion

By signing the bid, the bidder certifies that the bid submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

#### Non-Exclusive Contract

This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by either the agency (within an agencies delegated authority) or by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

#### Offer Acceptance Period

Proposals shall be irrevocable offers for 180 days after the proposal due date.

#### Offeror's Contact

3.1 All questions regarding this Request for Proposal, including technical specifications, proposal process, etc., must be directed to the Procurement Manager as indicated on the first page of this document.

3.2 Offerors may not contact the employees of the using Agencies concerning this procurement while the proposal and evaluation are in process.

#### Offshore Performance of Work Prohibited

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or overhead services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### Payment

The contractor shall submit to the issuing agency, after completion of the task or combination of tasks listed by the issuing agency. Each task order, a statement of charges for the work completed under that

task order, in conformance with the pricing schedule of this contract, the issuing agency shall process the claim for prompt payment in accordance with the standard operating procedures of the state.

The Contractor shall be paid based on the amount agreed upon in writing. All additional work must be approved by the State in advance and be in accordance with the contract rate.

Work shall be completed in a responsible and professional manner in accordance with the requirements incorporated in the assignment. Determination of acceptability of work will be made by the State. Payment shall be made upon State's receipt of Contractor's invoice. However, should the work products require correction, the State reserves the right to withhold all or partial payment on future assignments until the work product has been reviewed and accepted by the State. Payment of any invoice shall not preclude the Department from making claim for adjustment on any service found to have been in non-compliance with the contract.

#### Performance Standards

The State relies upon the provision of services in accordance with the contract. Therefore, while assignment due dates are variable, the Contractor agrees that time is of the essence, and that contractual commitments shall be met.

Performance of this contract may require the Contractor to have access to and use of data and information which may be considered proprietary to a Government agency or a Government Contractor or which may otherwise be of such a nature that its dissemination or use, other than in the performance of this contract, would be adverse to the interests of the State or others.

The Contractor agrees that Contractor's employees will not divulge or release data or information developed or obtained in connection with the performance of the resulting contract, unless made public by the State, except to authorized State personnel or upon written approval of the State.

#### Records

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other 'records' relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State including the Auditor General's duly authorized representative, at reasonable times. Upon request, the Contractor shall produce and deliver to the State and Auditor General's office, at no charge, a legible copy of any or all such books, documents, records and any other audit documentation that are in any way pertinent to this contract.

#### Reference to Uniform Terms and Conditions

The State of Arizona Uniform Terms and Conditions are incorporated herein by reference (Go to the Arizona Department of Administration website <http://spo.az.gov> Administration & Policy/State Procurement Manual/Standard Forms and Documents/Uniform Terms and Conditions).

#### Relationship With Others

The Contractor shall cooperate fully with the State, the Arizona counties, municipalities and local government officials, and all such others as may be required in the performance of this Contract. This shall include attendance at meetings, discussion, and hearings, as may be required; presentation of data, as may be requested from time to time by the State to effect such cooperation; and compliance with all directives issued by the State.

#### Scrutinized Business Operations

Pursuant to A.R.S. § 35-391.06 and § 35-393.06, the Contractor certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. § 35-391 or and § 35-393, as applicable.

#### Specific Eligible Agency

Any contract resulting from this solicitation shall be for the exclusive use of the State of Arizona agency designated.

#### Start and Completion Dates



The State, on an as-required basis, shall establish the dates of services by issuance of a written Work Order (see pages 68 and 69 of 85) to the Contractor.

The Contractor shall be available to begin work on a project site within ten (10) calendar days from the Contractor's acceptance date on State's Work Order, unless otherwise mutually agreed in writing by the Project Manager and Contractor.

#### State Property Protection (Moving)

Contractor shall protect his equipment from damage and shall protect state property from damage or loss arising in connection with this contract and shall be liable for any damage, injury or loss caused by his operations or those of his employees. To insure that no harm is done to the building, General Services Division, will oversee the removal.

#### Statewide Requirements Contract

This is a Statewide Requirements Contract intended for use by all Arizona State agencies and eligible political subdivisions. Performance under this Contract shall be administered by the State Procurement Office. A written task order or purchases order, authorized by the State Procurement Office is required prior to commencement of any task under this Contract. Contractor shall provide monthly reports showing status of all open assignments to the State Procurement Office.

#### Subcontractors

Supplemental to the Subcontractor term in the Uniform Terms and Conditions, Contractor shall not enter into any Subcontract under this Contract, for the provision of supplies or performance of services under this Contract, without the advance written approval of the Procurement Officer. When requesting the Procurement Officer's approval, the Contractor shall list all new subcontractors, their contact information, certifications required of them, their Minority and Women Owned Enterprise status (cite any certifications use in determining such status) as well as the subcontractor's proposed responsibilities under the Contract. With the request, Contractor shall certify that all Subcontracts incorporate by reference the terms and conditions of this Contract.

#### Subcontracts

The contractor may, with the consent of the State, enter into written subcontract(s) for performance of certain of its functions under the contract. The Commerce Procurement Office prior to the effective date of any subcontract must approve subcontractors in writing.

17.1 No subcontract that the contractor enters into with respect to performance under the contract shall in any way relieve the contractor of any responsibility for performance of its duties.

17.2 The contractor shall give the Commerce Procurement Office immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the contractor by any subcontractor or vendor which in the opinion of the contractor may result in litigation related in any way to the contract with the State.

#### Technical Maintenance Support

The Contractor shall have sufficient management and qualified manufacturer trained and certified technicians to service all copiers supplied under the maintenance agreement. Service representatives shall be factory-trained technicians. All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technician properly authorized by the manufacturer to perform such services. The State reserves the right to require proof of certification at any time during the term of the contract.

It will be the responsibility of the Contractor to have qualified trained sales/service staff personnel to provide software and technical assistance at any location, including assistance in problem solving, maintenance, machine operation, etc. Contractor must also have access to manufacturer's technical resources for problems that are beyond the ability of the Contractor's staff. Such assistance shall be available at no cost and within twenty-four (24) hours of notification by the State.

#### Term of Contract (2 Years)

The term of any resultant contract shall commence on the first day of the month following the date of award and shall continue for a period of two (2) years thereafter, unless terminated, canceled or extended as otherwise provided herein.

#### Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

#### Termination for Default

The State reserves the right to terminate the whole or any part of the contract due to failure of the Contractor to carry out any term, promise, or condition of the contract. The State will issue a written ten (10) day notice of default to the Contractor for failure to adequately perform, or there is reason for the State to believe that the Contractor cannot or will not adequately perform the requirements of the contract.

#### Travel

When requested, in writing, from the Using Agency to perform work that requires overnight accommodations, the Using Agency will reimburse the contractor in accordance with the current rates specified in the Rules and Regulations applicable to State employee's travel. The contractor shall itemize all per diem and lodging charges. State rates may be located at [www.gao.state.az.us](http://www.gao.state.az.us).

#### Vendor Registration

Prior to issuance of a Purchase Order and subsequent payment and/or formal award, the Contractor shall have a completed STATE OF ARIZONA SUBSTITUTE W-9 FORM on file with the State. No payments shall be made until the form is on file. The STATE OF ARIZONA SUBSTITUTE W-9 FORM will be provided to the Contractor at the time of Award and must be completely filled out and returned prior to the start of any project for the State.

# **ATTACHMENT**

## **“D”**





## **INDEPENDENT CONTRACTOR AGREEMENT**

**NOTE: THIS FORM APPLIES ONLY TO THE STATE OF ARIZONA AGENCIES, BOARDS, COMMISSIONS, AND UNIVERSITIES UTILIZING INDEPENDENT CONTRACTORS. THIS FORM DOES NOT HOWEVER APPLY TO EMPLOYERS IN THE CONSTRUCTION INDUSTRY THAT USE A CONTRACTOR. A CERTIFICATE OF WORKERS' COMPENSATION INSURANCE OR A SOLE PROPRIETOR WAIVER MUST BE OBTAINED IN THOSE INSTANCES.**

This is a written agreement under the compulsory Workers' Compensation laws of the State of Arizona, A.R.S. 23-901 (et. seq.), and specifically A.R.S. 23-902 (c)(d), that an independent contractor relationship exists between the parties signed below. The parties agree that the "independent contractor" is independent of the "business" in the execution of the work and not subject to the rule or control of the "business" but is engaged only in the performance of a definite job or piece of work and is subordinate to the "business" only in effecting a result in accordance with that "business" design. The parties also agree that the "business" does not have the authority to supervise or control the actual work of the "independent contractor" or the "independent contractor's" employees. Furthermore, it is understood and agreed that the "independent contractor" or the "independent contractor's" employees are not entitled to workers' compensation benefits from the "business".

The written agreement shall be null and void and create no presumption of an independent contractor relationship if the consent of either party is obtained through misrepresentation, false statements, fraud or intimidation, coercion or duress.

### **WE THE UNDERSIGNED AGREE THAT THE BUSINESS:**

- Does not require the independent contractor to perform work exclusively for the business. This paragraph shall not be construed as conclusive evidence that an individual who performs services primarily or exclusively for another person is an employee of that person.
- Does not provide the independent contractor with any business registrations or licenses required to perform the specific services set forth in the contract.
- Does not pay the independent contractor a salary or hourly rate instead of an amount fixed by contract.
- May terminate the agreement at any time for any reason whatsoever upon giving ten (10) days written notice, or at the end of the fiscal year.
- Does not provide tools to the independent contractor.

- Does not dictate the time of performance.
- Pays the independent contractor in the name appearing on the written agreement.
- Will not combine business operations with the person performing the services rather than maintaining these operations separately.

**NAME OF INDEPENDENT CONTRACTOR** \_\_\_\_\_

**FEDERAL ID# OR SOCIAL SECURITY** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**ADDRESS/P.O. BOX:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**SIGNATURE OF INDEPENDENT CONTRACTOR:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**STATE OF ARIZONA AGENCY:** Arizona Corporation Commission

**ADDRESS:** 1200 W. Washington St.

**CITY:** Phoenix, Arizona **ZIP:** 85007

**SIGNATURE OF AGENCY CONTRACT ADMINISTRATOR:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

# **ATTACHMENT**

## **“E”**

# STATE OF ARIZONA REIMBURSEMENT RATE INDEX

1. Personal Vehicle Mileage Reimbursement: **44.5 cents per mile effective 10/01/16**
2. In-State Lodging and Meal & Incidental Rates: **Effective 11/06/17**

State	Location	County	Begin	End	Lodging	M&IE
If a city is listed, then the city's rate applies. If a city is not listed and is located in a county whose rate is listed, then the county's rate applies. Otherwise, within the Continental United States, the rates to the right apply.					\$93	\$41
<b>Arizona</b>						
AZ	Grand Canyon / Flagstaff	Coconino/Yavapai less the city of Sedona	Oct 01	Oct 31	\$142	\$54
AZ	Grand Canyon / Flagstaff	Coconino/Yavapai less the city of Sedona	Nov 01	Feb 28	\$93	\$54
AZ	Grand Canyon / Flagstaff	Coconino/Yavapai less the city of Sedona	Mar 01	Apr 30	\$110	\$54
AZ	Grand Canyon / Flagstaff	Coconino/Yavapai less the city of Sedona	May 01	Sep 30	\$142	\$54
AZ	Kayenta	Navajo	Oct 01	Oct 31	\$126	\$49
AZ	Kayenta	Navajo	Nov 01	Feb 28	\$104	\$49
AZ	Kayenta	Navajo	Mar 01	Sep 30	\$126	\$49
AZ	Phoenix / Scottsdale	Maricopa	Oct 01	Dec 31	\$124	\$49
AZ	Phoenix / Scottsdale	Maricopa	Jan 01	Mar 31	\$174	\$49
AZ	Phoenix / Scottsdale	Maricopa	Apr 01	May 31	\$133	\$49
AZ	Phoenix / Scottsdale	Maricopa	Jun 01	Aug 31	\$93	\$49
AZ	Phoenix / Scottsdale	Maricopa	Sep 01	Sep 30	\$124	\$49
AZ	Sedona	City limits of Sedona	Oct 01	Sep 30	\$162	\$64
AZ	Tucson	Pima	Oct 01	Dec 31	\$93	\$49
AZ	Tucson	Pima	Jan 01	Feb 28	\$118	\$49
AZ	Tucson	Pima	Mar 01	Sep 30	\$93	\$49

# **ATTACHMENT**

## **"F"**



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C No. Ext.):	FAX (A/C No.):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
INSURED	INSURER A:	NAIC #
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

**COVERAGES**

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD W/O	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (EA occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY  <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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# **EXHIBIT 2**



ORIGINAL

OPEN MEETING AGENDA ITEM



0000191245

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

TOM FORESE – Chairman  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

IN THE MATTER OF THE COMMISSION'S  
INVESTIGATION OF THE BILLING AND  
WATER QUALITY ISSUES OF JOHNSON  
UTILITIES, LLC.

DOCKET NO. WS-02987A-18-0050

**STAFF'S NOTICE OF FILING  
AGREEMENT FOR INTERIM  
MANAGEMENT SERVICES**

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") hereby files a fully executed copy of the Agreement for Interim Management Services (the "IM Agreement") entered into between EPCOR Water Arizona, Inc. and Staff on August 14, 2018. A copy of the "Scope of Work" accompanying the IM Agreement as Attachment "A" will be docketed at a later date.

RESPECTFULLY SUBMITTED this 14th day of August, 2018.

Arizona Corporation Commission

**DOCKETED**

**AUG 14 2018**

DOCKETED BY

Naomi E. Davis, Staff Attorney  
Wesley C. Van Cleve, Senior Staff Attorney  
Robin R. Mitchell, Assistant Director  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402  
[ndavis@azcc.gov](mailto:ndavis@azcc.gov)  
[wvancleve@azcc.gov](mailto:wvancleve@azcc.gov)  
[RMitchell@azcc.gov](mailto:RMitchell@azcc.gov)

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL  
2018 AUG 14 PM 3:45

**CERTIFICATE OF SERVICE**

On this 14th day of August, 2018, the foregoing document was filed with Docket Control as an Utilities Division Notice of Filing - Miscellaneous, and copies of the foregoing were mailed on behalf of the Utilities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Andy Kvesic  
ARIZONA CORPORATION COMMISSION  
Director- Legal Division  
1200 West Washington Street  
Phoenix, AZ 85007  
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**Consented to Email Service**

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San Tan Valley, AZ 85143

Catherine Labranche  
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177 W. Twin Peaks Parkway  
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**Consented to Service by Email**

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2 Brent Billingsley, Town Manager  
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[Kelsey.pickard@pinalcountyaz.gov](mailto:Kelsey.pickard@pinalcountyaz.gov)  
9 **Consented to Service by Email**

10  
11  
12 By:   
13 Crystal L. Stewart  
Executive Legal Assistant  
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## **AGREEMENT FOR INTERIM MANAGEMENT SERVICES**

THIS AGREEMENT FOR INTERIM MANAGEMENT SERVICES ("Agreement") is made this 15<sup>th</sup> day of August, 2018 (the "Effective Date") by and between the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") with its principal place of business at 1200 W. Washington St. Phoenix, AZ 85008, and EPCOR Water Arizona Inc. ("EPCOR") having a place of business at 2355 West Pinnacle Peak Road, Suite 300, Phoenix, Arizona 85027 (collectively "the Parties").

### **RECITALS:**

- A. In Decision No. 76785 (July 24, 2018) the Commission ordered the Utilities Division ("Staff") to obtain an agreement with an interim manager to assume the operation of Johnson Utilities, L.L.C. ("Johnson") as soon as possible pending further order of the Commission.
- B. In accordance with Decision No. 76785, Staff made the determination to appoint EPCOR as the Interim Manager for Johnson's water and wastewater utility operations (the "Johnson Utilities").
- C. EPCOR possesses the necessary professional experience and expert skill and is qualified to perform the required services as Interim Manager of Johnson.
- D. Johnson has existing contractual relationships with Hunt Mgt., L.L.C. and Ultra Management, L.L.C. (collectively with any other affiliates of Johnson involved in any manner with the operation of the Johnson Utilities, the "Johnson Affiliates").
- E. Staff desires to engage Interim Manager upon the terms and conditions hereinafter set forth, and Interim Manager is willing to accept the engagement upon such terms and conditions.

NOW, THEREFORE, in consideration of the mutual premises set forth below and intending to be legally bound hereby, the parties agree as follows:

### **ARTICLE 1 – SCOPE OF SERVICES**

1.1 **Scope of Engagement.** EPCOR shall use reasonable efforts to operate, manage and maintain the Johnson Utilities in order to bring them into full compliance with Arizona law, Commission rules and orders and all other applicable regulatory rules. Staff hereby engages EPCOR to perform the services set forth in the Scope of Work attached to this Agreement and incorporated herein as Exhibit "A" to this Agreement. EPCOR hereby agrees to perform the Scope of Work upon the terms and conditions hereinafter set forth. EPCOR shall furnish the necessary management, supervision, and personnel as may be necessary to complete the Scope of Work. Notwithstanding any other provision contained herein, this Agreement will be immediately null and void, or not become effective, if Johnson fails, to the satisfaction of

EPCOR, to affirm at the August 14, 2018 Open Meeting that it will comply with any and all conditions set forth in Section 1.2.1 through Section 1.2.4., and makes clear progress to transfer access to regulated revenue bank accounts on August 15, 2018. EPCOR will notify Staff if it finds Johnson's affirmation satisfactory.

**1.2 Conditions Precedent.** EPCOR's appointment as Interim Manager of Johnson shall become effective on the Effective Date, but this Agreement will be subject to an immediate, full, complete and indefinite suspension should there be *any* reason for EPCOR, as Interim Manager, to believe that *any* of the conditions set forth in Sections 1.2.1. through 1.2.4. (the "Conditions Precedent") are not being met or are no longer being met. Staff understands and agrees that the Conditions Precedent are perpetual and that EPCOR has the complete right to suspend this Agreement at any time *any* of the Conditions Precedent are not being met. At that time, EPCOR will notify Staff that it is exercising its right to suspend this Agreement. Staff understands and agrees that Staff, and not EPCOR, has the responsibility to take any and all actions to assure that the Conditions Precedent can and will be met going forward by securing such assurance through an order or orders from any and all courts of competent jurisdiction, and that the suspension *will not* be lifted until such assurance is obtained by Staff, to the satisfaction of EPCOR, as Interim Manager. Further, and notwithstanding any provision to the contrary, EPCOR will have the complete discretion to terminate this Agreement if it has any reason to believe that any one of the Conditions Precedent cannot be obtained, or can no longer be obtained, at any time on or after the fifteenth (15<sup>th</sup>) day after the Effective Date.

**1.2.1** Commission shall have taken any and all action necessary to provide EPCOR with full and exclusive access to and control over all revenues paid by customers of Johnson for utility service or by third parties as contributions or advances in aid of construction or otherwise, whether such revenues are currently paid into a financial institution account controlled by Johnson or a Johnson Affiliate. Staff understands and agrees that it may be necessary for it to obtain an order or orders from a court of competent jurisdiction directing such financial institutions to allow EPCOR complete access to these accounts, with such financial institutions providing written confirmation of their intent to comply with any court order allowing EPCOR access.

**1.2.3** Staff shall have obtained from Arizona Department of Environmental Quality ("ADEQ") a written agreement by ADEQ that any citation or fine or other penalty issued by ADEQ relating to the Johnson Utilities will be issued against Johnson and not against EPCOR except only for any such citation, fine or penalty relating exclusively to the manner in which EPCOR operated the Johnson Utilities. For example and without limiting the generality of the foregoing, any citation, fine or penalty resulting from the quality of the water produced by production wells on the Johnson Utilities systems will be issued against Johnson.

**1.2.4** Staff will apply for Commission approval to place a moratorium on any new service connections within Johnson's service territory, to be in effect until EPCOR, as Interim Manager,

performs a comprehensive assessment of the existing Johnson infrastructure, including its water supply and wastewater treatment capacity, and makes a recommendation for Staff approval as to whether, and how many, service connections can be added.

**1.3 Authority to Terminate Contract(s) involving Johnson.** Should EPCOR determine, based on an evaluation of facts and circumstances including findings from Decision No. 76785, that any existing contract between Johnson and another entity (including a Johnson Affiliate) is inappropriate in that it impedes the ability for Johnson customers (water or wastewater) to receive safe, adequate or reliable service, then EPCOR, in its role as Interim Manager, will have the right and authority to terminate any and all such contracts to the extent they can lawfully be terminated.

**1.4 Authority to Pursue Additional Water Supplies / Interconnections.** EPCOR, as Interim Manager, will have full authority to bring on additional water supplies in order to ensure Johnson water customers receive safe and reliable service, which may also include interconnection of facilities owned and operated by other water providers. EPCOR also has full authority, as Interim Manager, to pursue additional means to ensure safe and reliable wastewater service, including interconnection of facilities owned and operated by other wastewater providers.

**1.5 No Obligation to Infuse Capital.** Under no circumstances will EPCOR have any obligation to infuse its own capital into Johnson for any reason, including to prevent any revenue shortfalls for the provision of Johnson water or wastewater services. Should there be any revenue shortfall, or any other reason necessitating additional capital, Staff understands and acknowledges that the Commission will need to approve a surcharge or such other mechanism by which to address the shortfall or other reason necessitating additional capital. If, at its sole discretion as Interim Manager, EPCOR proposes to infuse its own capital into Johnson, it will be entitled to collect any and all outstanding amounts owed to it through a surcharge or other mechanism. Notwithstanding any provision to the contrary elsewhere in this Agreement, EPCOR will apply for an emergency surcharge to obtain approval for such capital investments (which approval may be in advance of EPCOR's infusion of capital), with the expectation that the Commission will review and make a determination under an expedited timeframe whether it to approve a surcharge or other recovery mechanism for EPCOR's benefit. Further, and at the request of EPCOR as the Interim Manager and to the extent necessary, Staff agrees to take any and all efforts to expeditiously obtain Commission approval of an accounting order regarding EPCOR's unpaid fees and expenditures and any outstanding amounts owed to it.

**1.6 Security for Amounts Owed to EPCOR.** EPCOR has the right, at its option, under this Agreement and as the Interim Manager, to place a blanket lien on all of Johnson's assets to secure any amounts owing to EPCOR as Interim Manager by Johnson, including any amounts owing as a result of Johnson's indemnity obligations under Commission Decision No. 76785. If determined to be necessary by EPCOR's outside legal counsel, Staff will order Johnson to



execute any and all agreements and documents necessary to create and perfect that security interest.

**1.7 Other Limitations on Scope of Services.** Staff and EPCOR acknowledge that EPCOR, in its role as Interim Manager of Johnson, will act independently from, and has no affiliation with, Johnson. EPCOR is not assuming any obligations of Johnson and will not be responsible for any obligations of Johnson. EPCOR, in its role as Interim Manager of Johnson, has no obligation to assist Johnson in any capacity other than what is specified in this Agreement. EPCOR has the authority under this Agreement to perform or contract with agents to perform services, including but not limited to the services set out in the Scope of Work, normally attendant with the general management of a water and wastewater utility as a public service corporation.

**1.7 Additional Services.** In the event that additional work or services are needed that are beyond the Scope of Work, EPCOR will submit a proposal to Staff that will include a description of the additional work or services needed, proposed rates, cost estimates and a brief explanation. Staff will have 30 days to consider the proposal. Staff reserves the right to accept or reject such a proposal.

**1.8 Emergency Action.** If EPCOR reasonably determines that public health, safety and welfare or regulatory compliance requires that a major repair or capital improvements be performed as soon as possible, then EPCOR is authorized to immediately take such actions as it deems necessary to mitigate that condition and will be entitled to compensation for making the repair or improvement. EPCOR will promptly notify Staff after taking any such action.

## **ARTICLE 2 – TERM**

**2.1 Duration and Termination.** This Agreement shall become effective on the Effective Date. The initial term of this Agreement will be three (3) years commencing on the Effective Date. This Agreement will remain in effect thereafter unless and until:

**2.1.1** Staff provides written notice to EPCOR that it was unable to fulfill the condition set forth in Section 1.2 within 90 days of the Effective Date.

**2.1.2** EPCOR, as Interim Manager, provides written notice to Staff of its intent to terminate this Agreement, for any reason, with such termination under this provision occurring no earlier than 30 days after EPCOR provides notice of termination.

**2.1.3** EPCOR, as Interim Manager, provides written notice to Staff to terminate due to Johnson's failure to comply with any condition of Decision No. 76785 and after the Parties have made reasonable efforts to enforce compliance, or if Johnson commences any legal proceeding to challenge EPCOR's blanket lien on Johnson's assets referenced in Section 1.6, above, with EPCOR having the right to terminate within 48 hours after providing such notice under this provision.

**2.1.4** Staff may terminate this Agreement only if it finds good cause to do so. For purposes of this provision, "good cause" means that Staff finds that EPCOR, as Interim Manager, has failed to perform or act in a manner that materially and adversely impacts the service to Johnson customers.

**2.2. Effect of Termination.** Upon termination of this Agreement, EPCOR will immediately return all materials provided to it used for the purposes of operating Johnson as the Interim Manager.

**2.3 Notice of non-permanency.** EPCOR understands and agrees that, notwithstanding its agreement to serve as the Interim Manager of Johnson pursuant to this Agreement, its appointment as Interim Manager is not a permanent appointment.

### **ARTICLE 3 – COMPENSATION**

**3.1 Monthly Interim Management Fee for services.** EPCOR will be entitled to pay itself, out of Johnson funds, a monthly fee of \$125,000 per month (the "Interim Management Fee"), with such fee for any month due on the 5th day of the next succeeding month (the "Due Date"). For the avoidance of doubt, the Interim Management Fee does not cover any of the direct costs incurred by EPCOR for the operation or maintenance of the Johnson Utilities. At its sole discretion, EPCOR may also use any Johnson funds to pay for any of the following: (1) operation, maintenance and repair costs relating to the Johnson Utilities; (2) payment of Johnson debts; (3) Johnson Utilities capital improvement costs, and (4) any other financial obligation reasonably incurred by EPCOR as the Interim Manager.

**3.2 Direct Bill for Additional Services.** EPCOR, at its sole discretion and as Interim Manager, may directly bill Johnson for, and apply any Johnson funds to payment of, any additional services it may perform as the Interim Manager. These services may include, but are not limited to: (1) expenses related to handling Johnson rate case and regulatory matters; (2) expenses related to use of EPCOR personnel for the handling of operational, environmental, engineering, legal, finance, customer billing and services, human resources, supply chain and other matters; (3) expenses for the use of contractors; (4) expenses for outside legal services; (5) expenses for other operations, maintenance and repair costs; (6) expenses to address debt obligations, capital improvement costs and other financial obligations; and (7) expenses for other services required for the continued operation of the Johnson Utilities systems. Under no circumstances will EPCOR include any mark up above expenses for services provided under this provision.

**3.3 Deficit.** If Johnson's income during the month is insufficient to allow EPCOR to recoup the Interim Management Fee and pay the other costs contemplated in Sections 3.1 and 3.2, or if Johnson interferes with or prevents payment of the Interim Management Fee to EPCOR, then EPCOR will have full authority to seek recovery for any deficit from Johnson, and Staff will fully support any such request, whether in a rate case for Johnson, or as a surcharge (whether through an adjustor or some other mechanism) either within a rate case or separate and apart from a rate case for Johnson. EPCOR, at its discretion, will also have full authority to seek an accounting order for eventual recovery of any deficit from Johnson through a rate case for

Johnson or through a surcharge (whether through an adjuster or some other mechanism) either within a rate case or and separate and apart from a rate case, which Staff will fully support. EPCOR will be entitled to collect any unpaid Interim Management Fee through a surcharge approved by the Commission and assessed on Johnson customer bills. Further, EPCOR has the right to seek approval from the Commission for an accounting order regarding collection of the Interim Management Fee under Section 3.1, or any outstanding expenses owed to EPCOR from Johnson under Sections 3.1 and 3.2. Staff will fully support any and all actions taken by EPCOR, to enforce any judgement it seeks from a court of competent jurisdiction for payment of any deficit owed to it by Johnson. EPCOR may, at its sole option, terminate this Agreement upon ten days' prior written notice to Staff upon any inability of EPCOR to pay itself any monthly Interim Management Fee on or before the applicable Due Date.

#### **ARTICLE 4- REPRESENTATIONS BY EPCOR AS INTERIM MANAGER.**

**4.1 Service Standards.** EPCOR, as Interim Manager, will perform the Scope of Work in a good and workmanlike manner, in accordance with Arizona law, Commission regulations, and applicable water and wastewater standards, practices, and procedures; provided, however, that nothing in this Agreement or EPCOR's service as the Interim Manager is intended to, or shall be deemed to, impose any liability upon EPCOR as a result of the condition of the Johnson Utility systems as of the Effective Date. EPCOR, as the Interim Manager, shall be responsible for the technical accuracy of its services and documents resulting therefrom, including those of any of its subcontractors or subconsultants, and Staff shall not be responsible for discovering their deficiencies.

**4.2 Compliance.** In the performance of the Scope of Work, EPCOR shall comply with all applicable laws, ordinances or regulations of any government authority or agency having jurisdiction ("Applicable Laws"); provided, however, that nothing in this Agreement or EPCOR's service as the Interim Manager is intended to, or shall be deemed to, impose any liability upon EPCOR as a result of the condition of the Johnson Utility systems as of the Effective Date. EPCOR's responsibilities under this Section 4.2 are limited solely to its performance of its duties under this Agreement.

#### **ARTICLE 5 - OBLIGATIONS OF STAFF.**

From and after the Effective Date and for so long thereafter as this Agreement remains in effect, Staff shall have the following responsibilities under this Agreement:

**5.1 Obligations of Staff to ensure Johnson's compliance with Decision No. 76785 (July 24, 2018).** Staff will take any and all actions reasonably necessary to ensure that Johnson fully complies with any and all orders from the Commission in Decision No. 76785, including but not limited to the following:

**5.1.1** That Johnson will indemnify, defend and hold harmless EPCOR (as the Interim Manager) from any and all actions EPCOR performs as the Interim Manager under this Agreement;

**5.1.2** That Johnson will cooperate fully with EPCOR, and supply any and all necessary documents, records and other information requested by EPCOR (whether in the possession of

Johnson or any Johnson Affiliate) that EPCOR determines is necessary to perform its functions as the Interim Manager under this Agreement;

5.1.2 To allow EPCOR, as Interim Manager, to have the full authority to conduct the business and affairs of Johnson in all respects except those expressly reserved as a right of ownership under Arizona law.

Actions that Staff will take to ensure Johnson's compliance with Decision No. 76785 include, but are not limited to, obtaining Commission approval for the commencement of litigation in court(s) of competent jurisdiction in order to enforce Decision No. 76785 against Johnson, including without limitation the obligation that Johnson indemnify, defend and hold harmless EPCOR, its officers, agents, and employees, any and all who are acting in the capacity of the Interim Manager, from any claims, damages and actions of any kind or nature arising from EPCOR acting as the Interim Manager, with the obligation of Johnson to provide such indemnification surviving the termination or expiration of this Agreement.

**5.2 Indemnification by the Commission.** Notwithstanding any provision to the contrary elsewhere in this Agreement, Staff will obtain Commission approvals necessary so that the Commission, to the extent lawful, will indemnify, defend and hold harmless, EPCOR and its agents, employees, contractors, officers and directors, any and all of whom are acting as Interim Manager, from and against any claim, liability, loss, cost, damage, or expenses (including but not limited to court costs, attorneys' fees and expenses) to the extent arising out of or resulting from any action of EPCOR acting as Interim Manager. If such indemnification is determined to be unlawful, then EPCOR will have full authority to seek recovery for such indemnification from Johnson, and Staff will fully support any such request, whether in a rate case for Johnson, or as a surcharge (whether through an adjustor or some other mechanism) either within a rate case or separate and apart from a rate case for Johnson. EPCOR, at its discretion, will also have full authority to seek an accounting order for eventual recovery of any such indemnification from Johnson through a rate case for Johnson or through a surcharge (whether through an adjustor or some other mechanism) either within a rate case or and from a rate case, which Staff will fully support. Staff will fully support any and all actions taken by EPCOR, to enforce any judgement it seeks from a court of competent jurisdiction for payment of such indemnification to it by Johnson.

## **ARTICLE 6 – FORCE MAJEURE**

**6.1 Force Majeure.** EPCOR will neither be liable to Staff nor to any other person, firm or corporation whatsoever, for any interruption or failure to perform any responsibility under this Agreement, or for any loss, injury or damage that occurs as a result of the interruption or failure, either directly or indirectly, when the interruption or failure is caused by or results from a Force Majeure including but not limited to the following:

- a. Fire, lighting, flood, windstorm, act of God, invasion or force majeure.
- b. Compliance with any orders, rules, or regulations, whether valid or invalid, of any governmental authority or agency.





**9.3 Counterparts and Digitally-Transmitted Signature.** This Agreement shall be executed in two counterparts, each of which shall be deemed an original, and proof of execution may be exchanged by digital means such as facsimile or electronically-mailed .pdf files.

**9.4 Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of Arizona.

**9.5 No Third-Party Beneficiaries.** This Agreement shall create no rights in any party other than the Staff and Interim Manager, and no other party is, or is intended to be, a third-party beneficiary of this Agreement.

**9.6 Headings.** Section headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any purpose.

**9.7 Severability.** In the event that any of the provisions of this Agreement are found to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected.

**9.8 Limitation of Liability.** Notwithstanding any provision in this Agreement to the contrary, EPCOR will not be liable for indirect, special, consequential, incidental, punitive or exemplary damages, in tort, contract or otherwise for any actions it performs as Interim Manager for Johnson under this Agreement. EPCOR will not be liable to any third parties for any damages occasioned by any fluctuations, interruptions or curtailment of water or wastewater service of Johnson. These limitations on damages survive the expiration or termination of this Agreement.

[signatures follow on next page]



IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year first above written.

Utilities Division, Arizona Corporation Commission

By: Ampoco S

Title: Division Director

Interim ~~Manager~~

By: [Signature]

Title: Vice President ARIZONA OPERATIONS

**Attachment A: Scope of Work**

# **EXHIBIT 3**

## **JOHNSON UTILITIES, L.L.C., ACKNOWLEDGEMENT AND CONSENT**

(Agreement for Interim Manager Services)

To: Johnson Utilities, L.L.C.  
968 E. Hunt Highway  
San Tan Valley, Arizona 85143  
Attention: Gary S. Drummond, Esq.

Re: Agreement for Interim Manager Services between Arizona Corporation Commission Utilities Division Staff ("Staff") and EPCOR Water Arizona Inc. ("EPCOR") dated August 15, 2018.

Johnson Utilities acknowledges for the benefit of Staff and EPCOR that, in Decision No. 76785 (July 24, 2018), the Arizona Corporation Commission ("Commission") ordered Staff to immediately commence efforts to obtain an agreement with an Interim Manager who would assume operation of Johnson Utilities, L.L.C. ("Johnson") as soon as possible on an interim basis pending further order of the Commission in Docket No. WS-02987A-18-0050. Staff has since entered into negotiations for EPCOR to assume the role of Interim Manager for Johnson, and to enter into an Agreement for Interim Manager Services between Staff and EPCOR with an Effective Date of August 15, 2018 (hereinafter referred to as the "Agreement"). Johnson further acknowledges that EPCOR has sought assurances that Johnson will comply with Decision No. 76785 and other Conditions Precedent (including those set forth in Sections 1.2.1. through 1.2.4. of the Agreement) both before the Effective Date of the Agreement, and throughout the initial three-year term of the Agreement and any renewal term of the Agreement. Accordingly, Johnson hereby confirms, for the benefit of both Staff and EPCOR, and acknowledges and agrees as follows:

1. Johnson will fully comply with Decision No. 76785 unless a court of competent jurisdiction makes the determination that the Commission exceeded its authority in issuing Decision No. 76785.
2. Johnson will provide EPCOR with full and exclusive access to and control over all revenues paid by customers of Johnson for utility service, or by third parties as contributions or advances in aid of construction or otherwise, whether such revenues are currently paid into a financial institution account controlled by Johnson or a Johnson Affiliate (including but not limited to Hunt Mgt. L.L.C. and Ultra Management, L.L.C.).
3. Johnson will comply with any order or orders from a court of competent jurisdiction directing any financial institutions to allow EPCOR complete access to Johnson accounts.

4. Johnson agrees that any citation or fine or other penalty issued by the Arizona Department of Environmental Quality (“ADEQ”) relating to the Johnson Utilities may be issued against Johnson and not against EPCOR, except only for any such citation, fine or penalty relating exclusively to the manner in which EPCOR operated the Johnson Utilities.
5. Johnson agrees to and supports a moratorium on any new service connections within Johnson’s service territory, to be in effect until EPCOR, as Interim Manager, performs a comprehensive assessment of the existing Johnson infrastructure, including its water supply and wastewater treatment capacity, and makes a recommendation for Staff approval as to whether, and how many, service connections can be added.
6. EPCOR has the right, at its option, under the Agreement and as the Interim Manager, to place a blanket lien on all of Johnson’s assets to secure any amounts owing to EPCOR as Interim Manager by Johnson, including any amounts owing as a result of Johnson’s indemnity obligations under Commission Decision No. 76785. If determined to be necessary by EPCOR’s outside legal counsel, Johnson will execute any and all agreements and documents necessary to create and perfect that security interest.
7. Johnson and its agents, officer, employees and owners, will fully cooperate with EPCOR, as Interim Manager, for as long as the Agreement is in effect. Johnson and its agents, officer, employees and owners will in no way interfere, or attempt to interfere, with EPCOR while EPCOR serves as Interim Manager. Johnson and its agents, officer, employees and owners will not impede access by EPCOR to any facilities, records, accounts and materials that EPCOR determines, in its sole discretion, it needs access in order to successfully operate Johnson and abide by the terms and conditions of the Agreement.

IN WITNESS WHEREOF, Johnson has duly executed this Acknowledgement and Consent as of August \_\_\_\_\_, 2018.

Johnson Utilities, L.L.C.

By: \_\_\_\_\_

Title: \_\_\_\_\_